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Tel : 3919 3307

Date : 4 July 2013

From : Clerk to the Legislative Council

To : All Members of the Legislative Council

Council meeting of 10 July 2013

**Inland Revenue and Stamp Duty Legislation
(Alternative Bond Schemes) (Amendment) Bill 2012**

Committee stage amendments

The Second Reading debate on the above Bill will be resumed at the Council meeting of 10 July 2013. Subject to the Bill receiving a Second Reading, the President has given permission for the Secretary for Financial Services and the Treasury to move proposed amendments to the Bill at its Committee stage.

2. As directed by the President, the proposed amendments are attached for Members' consideration.

(Ms Jessica CHAN)
for Clerk to the Legislative Council

Encl.

Inland Revenue and Stamp Duty Legislation (Alternative Bond Schemes) (Amendment)
Bill 2012

Committee Stage

Amendments to be moved by the Secretary for Financial Services and the Treasury

- | <u>Clause</u> | <u>Amendment Proposed</u> |
|---------------|--|
| 4 | In the proposed Schedule 17A, by deleting “27]” and substituting “29]”. |
| 4 | In the proposed Schedule 17A, in paragraph (d) of the Note, by deleting “11” and substituting “11A”. |
| 4 | In the proposed Schedule 17A, in section 1(2), in the definition of <i>investment return</i> , by deleting paragraph (b) and substituting— “(b) in relation to a lease arrangement or a profits sharing arrangement, means the investment return calculated in accordance with section 10 of this Schedule;”. |
| 4 | In the proposed Schedule 17A, in section 1(2), in the definition of <i>investment return</i> , in paragraph (c), by deleting the full stop and substituting “; and”. |
| 4 | In the proposed Schedule 17A, in section 1(2), in the definition of <i>investment return</i> , by adding— “(d) in relation to an agency arrangement, means the investment return calculated in accordance with section 11A of this Schedule;”. |
| 4 | In the proposed Schedule 17A, in section 1(2), by adding— |

“*special purpose vehicle* (特定目的工具), in relation to any scheme or schemes, means a corporation, partnership or any other entity that—

- (a) is established solely for the purposes of the scheme or schemes (as the case requires); and
- (b) does not carry on any trade or activities except for the purposes of the scheme or schemes (as the case requires).”.

4 In the proposed Schedule 17A, in section 2(3)(b), by deleting “incorporated, constituted or acquired solely for the purposes of” and substituting “a special purpose vehicle for”.

4 In the proposed Schedule 17A, in section 2(4)(a), by deleting “3(2)” and substituting “3(2)(b)”.

4 In the proposed Schedule 17A, in section 3(1), by deleting “person incorporated, constituted or acquired solely for the purposes of” (wherever appearing) and substituting “special purpose vehicle for”.

4 In the proposed Schedule 17A, in section 3(1)(b), by deleting “that person” and substituting “that special purpose vehicle”.

4 In the proposed Schedule 17A, in section 3(4)(b)(i) and (ii), by deleting “(2)” and substituting “(2)(b)”.

4 In the proposed Schedule 17A, in section 6(2)(a)(ii)(B), by deleting “and” and substituting “or”.

4 In the proposed Schedule 17A, in section 6(3)(a)—

- (a) by deleting “from the originator”;
- (b) by adding “from the originator” after “(2)”.

4 In the proposed Schedule 17A, in section 6(3)(c)—

- (a) by deleting “to the originator”;
- (b) by adding “to the originator” after “(2)”.

4 In the proposed Schedule 17A, in section 7(1)(a)(ii)(B), by adding “only” after “skills”.

4 In the proposed Schedule 17A, in section 9(1)(c), by deleting “a fixed agency fee or an incentive fee” and substituting “an agency fee or an incentive fee, or both”.

4 In the proposed Schedule 17A, by deleting section 10 and substituting—

“10. Lease arrangement and profits sharing arrangement—investment return

(1) This section applies to a specified investment arrangement that is—

- (a) a lease arrangement; or
- (b) a profits sharing arrangement.

(2) The investment return paid or payable under a specified investment arrangement to which this section applies in a period in the specified term is to be calculated in accordance with the following formula—

$$A + B - C + D - E$$

(3) If the formula is used for calculating the investment return paid under a specified investment arrangement in the period—

A means—

- (a) for a lease arrangement, the total amount of specified income (referred to in section 6(1)(c) of this Schedule) paid under the arrangement in the period, plus any amount regarded under subsection (5)(b) as specified income paid under the

arrangement in the period; or

- (b) for a profits sharing arrangement, the total amount of specified return (referred to in section 7(1)(d) of this Schedule) paid under the arrangement in the period;
 - B means the specified proceeds of disposal paid under the arrangement in the period;
 - C means the specified acquisition cost paid under the arrangement in the period;
 - D means the total amount of any other sums paid by the originator to the bond-issuer under the arrangement in the period;
 - E means—
 - (a) for a lease arrangement, nil; or
 - (b) for a profits sharing arrangement, the total amount of any incentive fee (referred to in section 7(1)(e) of this Schedule) that is paid by the bond-issuer to the originator under the arrangement in the period.
- (4) In this section, in relation to a specified investment arrangement in a specified alternative bond scheme—

full redemption of bonds (全額贖回債券) means full redemption or cancellation of the alternative bonds under the bond arrangement in the scheme;

partial redemption of bonds (局部贖回債券) means partial redemption or cancellation of the alternative bonds under the bond arrangement in the scheme;

specified acquisition cost (指明取得成本), in relation to a period in the specified term, means the sum specified in paragraph (a) or (b) or the total amount of the sums specified in paragraphs (a) and (b) (as the case requires)—

- (a) if the specified proceeds of disposal is wholly or partly attributable to the consideration for the disposal of an asset as, or as part of, the specified asset—the acquisition cost or the part of the acquisition cost attributable to the asset disposed of (as the case requires);
- (b) if the specified proceeds of disposal is wholly

or partly attributable to the money deemed under subsection (5)(c)(ii) to be the consideration for the deemed disposal of an asset as, or as part of, the specified asset—the acquisition cost or the part of the acquisition cost attributable to the asset deemed to be disposed of (as the case requires);

specified proceeds of disposal (指明處置所得), in relation to a period in the specified term, means the sum specified in paragraph (a) or (b) or the total amount of the sums specified in paragraphs (a) and (b) (as the case requires)—

- (a) the consideration for the disposal of an asset as, or as part of, the specified asset if the consideration is used for full or partial redemption of bonds in the period;
 - (b) the money deemed under subsection (5)(c)(ii) to be the consideration for the deemed disposal of an asset as, or as part of, the specified asset.
- (5) If an asset (*asset A*) that is or forms part of the specified asset under a lease arrangement is destroyed or lost—
- (a) the money arising from the destruction or loss is the total amount of the following—
 - (i) any insurance money or other compensation of any description arising in respect of the destruction or loss;
 - (ii) any consideration received for the disposal of any remains left of asset A after the destruction or loss;
 - (b) if in a period—
 - (i) the money arising from the destruction or loss is received by the bond-issuer but is not used for full or partial redemption of bonds; and
 - (ii) the money or part of it is not used for any acquisition of an asset as, or as part of, the specified asset referred to in section 6(2)(a)(ii) of this Schedule,

then the unused money or part is to be regarded as specified income paid under the arrangement in the period for the purposes of

subsection (3); and

- (c) if the money arising from the destruction or loss is received by the bond-issuer who uses the money for full or partial redemption of bonds in a period, then—
 - (i) asset A is deemed to be disposed of in the period; and
 - (ii) the money arising from the destruction or loss is deemed to be consideration for the deemed disposal of asset A in the period.
- (6) If the formula is used for calculating the investment return payable under a specified investment arrangement in the period, then subsections (3), (4) and (5) apply with necessary modifications including—
 - (a) paid is to be read as payable;
 - (b) disposed of is to be read as to be disposed of;
 - (c) received is to be read as receivable; and
 - (d) used is to be read as to be used.”.

4 In the proposed Schedule 17A, in the Chinese text, in section 11(2) and (3), by deleting “公式” and substituting “上述公式”.

4 In the proposed Schedule 17A, in Division 2, by adding—

“11A. Agency arrangement—investment return

- (1) The investment return paid or payable under an agency arrangement in a period in the specified term is to be calculated in accordance with the following formula—

$$A + B - C$$

- (2) If the formula is used for calculating the investment return paid under an agency arrangement in the period—

A means the total amount of specified return (referred to in section 9(1)(c) of this Schedule) paid under the arrangement in the period;

B means the total amount of any other sums paid by the originator to the bond-issuer under the

arrangement in the period;

C means the total amount of any agency fee and incentive fee (referred to in section 9(1)(c) of this Schedule) that is paid by the bond-issuer to the originator under the arrangement in the period.

(3) If the formula is used for calculating the investment return payable under an agency arrangement in the period, A, B and C have the meaning given by subsection (2), except that a reference in that subsection to paid is to be read as payable.”

4 In the proposed Schedule 17A, in the Chinese text, in section 13(6) and (7), by deleting “公式” and substituting “上述公式，”.

4 In the proposed Schedule 17A, in section 21(4)(a), by deleting “affecting section 7(3)(b) of this Schedule” and substituting “limiting subsection (3)(a)”.

4 In the proposed Schedule 17A, in section 23(1), by deleting “This section applies” and substituting “Subsections (2), (3) and (4) apply”.

4 In the proposed Schedule 17A, in section 24(1), by deleting everything after “person” and substituting—

“who makes a BA claim or IA claim in relation to an arrangement in a scheme (*alleged specified alternative bond scheme*) for the purposes of ascertaining the assessable profits of the trade, profession or business for any year of assessment.”.

4 In the proposed Schedule 17A, by deleting section 26(8) and substituting—

“(8) . Despite subsection (7), if—

(a) a specified assessment is made for a year of assessment because of the disqualification of an accepted arrangement; and

(b) a person makes an objection under section 64 of this Ordinance against the specified assessment, disputing the disqualification,

the objection is to be regarded as objections so made by the person against all specified assessments made for all years of assessment because of that disqualification.”.

6 By deleting subclause (2) and substituting—

“(2) A relevant instrument is to be regarded as a debt instrument within the meaning of section 14A of the IRO in relation to a year of assessment to the extent to which it would have been such a debt instrument if paragraph (g) of the definition of *debt instrument* in subsection (4) of that section, as amended by subsection (1) of this section, had always been in force.”.

6 By adding—

“(2A) If, for the purposes of an assessment made before the date of commencement of subsection (1), a relevant instrument was regarded as a debt instrument within the meaning of section 14A of the IRO, the assessment is to be regarded as valid to the extent to which it would have been valid if paragraph (g) of the definition of *debt instrument* in subsection (4) of that section, as amended by subsection (1) of this section, had always been in force.

(2B) For the purposes of subsections (2) and (2A)—

IRO (《條例》) means the Inland Revenue Ordinance (Cap. 112);

relevant instrument (相關票據) means an instrument issued on or after 24 May 1996 but before 14 November 2003.”.

17 By deleting “89(9)” and substituting “89(10)”.

17 In the proposed section 89(10)—

(a) by deleting “(10)” and substituting “(11)”;

(b) by deleting “Schedule 27” and substituting “Schedule 29”.

18 In subclause (1), by deleting “27]” and substituting “29]”.

- 19 In subclause (1), by deleting “27]” and substituting “29]”.
- 20 In the heading, by deleting “**Schedule 27**” and substituting “**Schedule 29**”.
- 20 By deleting “Schedule 26” and substituting “Schedule 28”.
- 20 In the proposed Schedule 27, by deleting—
“**Schedule 27** [s. 89(10)]”
and substituting—
“**Schedule 29** [s. 89(11)]”.
- 21 In the proposed section 47C(1), in the Chinese text, by adding “的涵義” after “各詞語”.
- 21 In the proposed section 47F(3)(a) and (b), by deleting “apart from” and substituting “but for”.
- 21 In the proposed section 47G, in the heading, by deleting “**Sections 29CA and 29DA modified**” and substituting “**Relief resulting from modification of sections 29CA and 29DA**”.
- 21 In the proposed section 47G(1), by deleting everything after “on sale” and substituting—
“if it is shown to the satisfaction of the Collector that—
(a) the agreement or conveyance falls within section 1 of that Schedule; and
(b) the requirements under subsection (1A) or (1B) are complied with.”.

21

By adding after the proposed section 47G(1)—

“(1A) If the operation of subsection (1) will result in the agreement or conveyance not being chargeable with special stamp duty under head 1(1B) or 1(1AA) in the First Schedule, security must be given to the satisfaction of the Collector for the payment of—

(a) the special stamp duty that, but for subsection (1), would have been chargeable on the agreement or conveyance; and

(b) other amounts that, but for subsection (1), would have been payable under this Ordinance.

(1B) If the operation of subsection (1) will result in the agreement or conveyance being chargeable with special stamp duty under head 1(1B) or 1(1AA) in the First Schedule of an amount that is less than the amount that would have been chargeable but for subsection (1), security must be given to the satisfaction of the Collector for the payment of—

(a) the amount by which the special stamp duty chargeable will be reduced by the operation of subsection (1); and

(b) the excess of the amounts (other than the special stamp duty) that, but for subsection (1), would have been payable under this Ordinance over the amounts (other than the special stamp duty) that will be payable with the operation of subsection (1).”.

21

In the proposed section 47G(2)(a) and (b), by deleting “this section” and substituting “subsection (1)”.

21

In the proposed section 47H(1)(a)(ii), by adding “respectively” before “the originator”.

21

In the proposed section 47H(2)(b)(ii), by deleting everything after “pay” and substituting “to the Collector, by way of stamp duty, an amount equal to the stamp duty that would have been chargeable on the instrument had the relief not been granted;”.

21 In the proposed section 47H(2)(b)(iii), by deleting everything after “pay” and substituting—

“to the Collector, by way of stamp duty, an amount equal to—

(A) for an agreement or a conveyance that is not chargeable with special stamp duty because of the relief—the special stamp duty that would have been chargeable on the agreement or conveyance had the relief not been granted; or

(B) for an agreement or a conveyance that, because of the relief, is chargeable with special stamp duty of an amount that is less than the amount that would have been chargeable but for the relief—the amount by which the special stamp duty chargeable is reduced because of the relief; and”.

21 By deleting the proposed section 47H(2)(b)(iv).

21 In the proposed section 47H(2)(b)(v), by deleting “stamp duty referred to in subparagraph (ii) or (iii) must be payable” and substituting “amount payable under subparagraph (ii) or (iii) must be paid”.

21 In the proposed section 47H(3), by deleting “If the amount referred to in subsection (2)(b)(iv)” and substituting “If the amount payable under subsection (2)(b)(ii) or (iii)”.

21 In the proposed section 47H(3)(c), by deleting “the amount referred to in subsection (2)(b)(iv)” and substituting “an amount equal to the amount payable under subsection (2)(b)(ii) or (iii)”.

30 By deleting subclause (3) and substituting—

“(3) Section 45(5A)(c)—

Repeal

everything after “instrument”

Substitute

“had relief not been granted under this section;”.’.